

EXHIBIT 63

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IN THE MATTER OF

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MADOFF CHARITIES INVESTIGATION

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120 Broadway
New York, New York

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January 30, 2009
10:02 a.m.

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EXAMINATION UNDER OATH of J.

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EZRA MERKIN, pursuant to Subpoena, held at

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the above place, date and time, before

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Alice Schulman, a Notary Public of the

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State of New York.

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Gabriel Capital L.P. It's possible that was Gabriel Capital L.P. or Ariel Capital L.P., it's possible.

Q. One thing that would be helpful, if you would explain how the split strike strategy evolved over time, at least your understanding of it.

A. The evolution over time was, I think, one very specific change and that is rather than do individual stocks with their own options contracts, meaning the puts beneath and the calls above, the strategy evolved toward what Mr. Madoff called baskets, meaning that a larger and larger number of stocks, of components in the basket, the qualifying characteristic of each and every one of them being they were all part of the S&P 100.

Each of the stocks was one of the S&P 100, were the stocks, and instead of having the puts and calls, as I previously described, OEX puts and OEX calls -- let me give you an example. OEX puts were purchased and OEX calls were

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sold, so that OEX are options struck on
the S&P 100.

And we would have as many as 50
or more individual stocks that were all
part of the S&P 100 as our longs, long
puts, but now just puts that belong to the
individual stocks, but the OEX puts
beneath them and the OEX calls sold above
them.

Q. Is it fair to say that it was
the same basic strategy but instead of
individual stocks, it was using baskets of
stocks?

MR. LEVANDER: That's not
exactly what he said.

MR. MARKOWITZ: I'm asking him.

A. Just repeat the question.

Q. Is it fair to say that the same
basic strategy stayed the same with the
exception of employing the strategy with
respect to individual stocks, Mr. Madoff
employed the strategy to baskets of
stocks?

A. What you described is what the

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were offering us, both in terms of risk
rewards and in terms of liquidity.

Our positions were moving toward
less liquid things, and within the 25
percent maximum constraint, the liquidity
adjusted return was still there.

Q. Now, with respect to these funds
that invested in Madoff, what was the
economic relationship between those funds
and Mr. Madoff?

MR. LEVANDER: I'm not sure I
understand that question.

Q. What fees were incurred as a
result of being with Mr. Madoff?

A. In the narrow sense of fees, I'm
not trying to parse your question, we
didn't pay Madoff fees at all. We paid
commissions, that's an economic quip.

So to answer your question, we
paid commissions on the stocks, on the
shares we paid commissions, on the option
contracts, and we didn't pay any other
fees.

Q. Didn't that strike you as

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is that right?

A. I don't think so unless it was very briefly in the beginning in a small way. Sometimes I think when you say Ariel, I think you mean Gabriel. If you mean Ariel Fund Ltd., which is what I mean by Ariel, unless it was at the beginning Ariel Fund and Gabriel Capital L.P. each had their own account at Madoff and didn't come in by investing in Ascot. They had their own managed accounts, their own trades, their known slips and their own monthlies. That's why the audit shows up the way it does.

Q. Okay, we'll have more than that but I want to keep my pledge to get you out at 3:30.

MR. LEVANDER: Thanks.

A. Thank you for keeping your pledge.

[Time noted: 3:27 p.m.]

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